



## JURISDICTION AND VENUE

2. Jurisdiction of this Court arises under 28 U.S.C. § 1331 and 47 U.S.C. §227(b)(3). See, *Mims v. Arrow Financial Services, LLC*, 132 S.Ct. 740 (2012), holding that federal and state courts have concurrent jurisdiction over private suits arising under the TCPA.
3. Venue is proper in the United States District Court for the District of Wyoming pursuant to 28 U.S.C § 1391(b) because Plaintiff resides within this District and a substantial part of the events or omissions giving rise to the herein claims occurred, or a substantial part of property that is the subject of the action is situated within this District.

## PARTIES

4. Plaintiff is a natural person residing in the Natrona County, in the city of Casper, Wyoming.
5. Defendant is a Virginia corporation doing business in the State of Wyoming with its principal place of business located in McLean, Virginia.
6. At all times relevant to this Complaint, Defendant has acted through its agents employees, officers, members, directors, heir, successors, assigns, principals, trustees, sureties, subrogees, representatives and insurers.

## FACTUAL ALLEGATIONS

7. Defendant placed collection calls to Plaintiff seeking and attempting to collect on alleged debts incurred through purchases made on credit issued by Defendant.
8. Defendant placed collection calls to Plaintiff's cellular telephone at phone number (307) 247-13XX.
9. Defendant placed collection calls to Plaintiff from phone numbers including, but not limited to (800) 955-6600.

- 1 10. Per its prior business practices, Defendant's calls were placed with an automated telephone  
2 dialing system ("auto-dialer").
- 3 11. Defendant used an "automatic telephone dialing system", as defined by 47 U.S.C. § 227(a)  
4 (1) to place its telephone calls to Plaintiff seeking to collect a consumer debt allegedly  
5 owed by Plaintiff, CHRISTINE FRITCHIE.
- 6 12. Defendant's calls constituted calls that were not for emergency purposes as defined by 47  
7 U.S.C. § 227(b)(1)(A).
- 8 13. Defendant never received Plaintiff's "prior express consent" to receive calls using an  
9 automatic telephone dialing system or an artificial or prerecorded voice on her cellular  
10 telephone pursuant to 47 U.S.C. § 227(b)(1)(A).
- 11 14. On or about January 6, 2017, at or about 11:05 a.m. Pacific Standard Time, the Plaintiff  
12 called into Defendant's company at phone number (800) 955-6600 and spoke with  
13 Defendant's female representative ("Samantha") and requested that Defendant cease  
14 calling Plaintiff's cellular phone.
- 15 15. During the conversation on January 6, 2017, Plaintiff gave Defendant both her phone  
16 number and social security number to assist Defendant in accessing her account before  
17 asking Defendant to stop calling her cell phone.
- 18 16. Plaintiff revoked any consent, explicit, implied, or otherwise, to call her cellular telephone  
19 and/or to receive Defendant's calls using an automatic telephone dialing system in her  
20 conversation with Defendant's representative on November 21, 2016.
- 21 17. Despite Plaintiff's request to cease, Defendant placed another collection call to Plaintiff  
22 on the same day of January 6, 2017.
- 23 18. Defendant continued to place collection calls to Plaintiff through March 12, 2017.
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1 19. Despite Plaintiff's request that Defendant cease placing automated collection calls,  
2 Defendant placed at least fifty-eight (58) automated calls to Plaintiff's cell phone.

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6 **FIRST CAUSE OF ACTION**  
7 **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT**  
8 **47 U.S.C. § 227**

9 20. Plaintiff repeats and incorporates by reference into this cause of action the allegations set  
10 forth above at Paragraphs 1-19.

11 21. The foregoing acts and omissions of Defendant constitute numerous and multiple  
12 negligent violations of the TCPA, including but not limited to each and every one of the  
13 above cited provisions of 47 U.S.C. § 227 et seq.

14 22. As a result of Defendant's negligent violations of 47 U.S.C. § 227 et seq., Plaintiff is  
15 entitled to an award of \$500.00 in statutory damages, for each and every violation,  
16 pursuant to 47 U.S.C. §227(b)(3)(B).

17 23. Plaintiff is also entitled to seek injunctive relief prohibiting such conduct in the future.

18 **SECOND CAUSE OF ACTION**  
19 **KNOWING AND/OR WILLFUL VIOLATIONS OF THE TELEPHONE CONSUMER**  
20 **PROTECTION ACT**  
21 **47 U.S.C. § 227 et. seq.**

22 24. Plaintiff repeats and incorporates by reference into this cause of action the allegations set  
23 forth above at Paragraphs 1-23.

1 25. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing  
2 and/or willful violations of the TCPA, including but not limited to each and every one of  
3 the above cited provisions of 47 U.S.C. § 227 et seq.

4 26. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227 et seq.,  
5 Plaintiff is entitled an award of \$1,500.00 in statutory damages, for each and every  
6 violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

7 27. Plaintiff is also entitled to seek injunctive relief prohibiting such conduct in the future.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff, CHRISTINE FRITCHIE, respectfully requests judgment be  
10 entered against Defendant, CAPITAL ONE BANK (USA), N.A., for the following:

11 **FIRST CAUSE OF ACTION**

12 28. For statutory damages of \$500.00 multiplied by the number of negligent violations of the  
13 TCPA alleged herein (58); \$29,000.00;

14 29. Actual damages and compensatory damages according to proof at time of trial;

15 **SECOND CAUSE OF ACTION**

16 30. For statutory damages of \$1,500.00 multiplied by the number of knowing and/or willful  
17 violations of TCPA alleged herein (58); \$87,000.00;

18 31. Actual damages and compensatory damages according to proof at time of trial;

19 **ON ALL CAUSES OF ACTION**

20 32. Actual damages and compensatory damages according to proof at time of trial;

21 33. Costs and reasonable attorneys' fees;

22 34. Any other relief that this Honorable Court deems appropriate.

23 **JURY TRIAL DEMAND**

1 35. Plaintiff demands a jury trial on all issues so triable.

2 RESPECTFULLY SUBMITTED,

3 DATED this 26<sup>th</sup> day of July, 2017.

4 /s/Brett D. Cragun

5 BRETT D. CRAGUN (Wyoming Bar No. 6-3377)

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